

|   |  |
|---|--|
| FILED<br>ENTERED                              | RECEIVED<br>SERVED ON<br>COUNSEL/PARTIES OF RECORD |
| SEP 24 2008                                   |  |
| CLERK US DISTRICT COURT<br>DISTRICT OF NEVADA |  |
| BY: _____                                     | DEPUTY   |

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FERNANDO NAVARRO  
HERNANDEZ,  
  
Petitioner,  
  
vs.  
  
E.K. McDANIEL, *et al.*,  
  
Respondents

3:09-cv-00545-LRH-RAM

## ORDER

This action is a petition for a writ of habeas corpus under 28 U.S.C. § 2254 by Fernando Navarro Hernandez, a Nevada prisoner sentenced of death. Hernandez filed his petition on September 18, 2009. Docket #1. He has paid the \$5 filing fee for this action.

Despite having paid the \$5 filing fee, Hernandez also filed an application to proceed *in forma pauperis*. Docket #3. In view of the financial information Hernandez has provided with his application, the court will grant his motion in part and deny it in part. The court will not waive payment of the \$5 filing fee, but will grant Hernandez leave to proceed *in forma pauperis* with respect to subsequent fees and costs.

Hernandez also filed a motion for appointment of counsel. Docket #2. Hernandez's application to proceed *in forma pauperis* shows that he lacks the resources necessary to employ counsel to prosecute this capital habeas corpus proceeding. Therefore, pursuant to 18 U.S.C. §

1 3599(a), the Federal Public Defender for the District of Nevada ("FPD") shall be appointed to  
2 represent Hernandez. If the FPD is unable to represent Hernandez, due to a conflict of interest or any  
3 other reason, then alternate counsel for Hernandez will be located, and appointed by the court.  
4 Hernandez's appointed counsel will represent him in all future federal proceedings in this court  
5 relating to this matter, including subsequent actions, and appeals therefrom, pursuant to 18 U.S.C. §  
6 3599(e), until allowed to withdraw.

7 **IT IS THEREFORE ORDERED** that petitioner's Application to Proceed *in Forma*  
8 *Pauperis* (docket #3) is **GRANTED IN PART AND DENIED IN PART**. The Application to  
9 Proceed *in Forma Pauperis* is **DENIED** with respect to waiver of payment of the filing fee, but  
10 **GRANTED** with respect to subsequent fees and costs.

11 **IT IS FURTHER ORDERED** that petitioner's Motion for Appointment of Counsel (docket  
12 #2) is **GRANTED**. The Federal Public Defender for the District of Nevada is appointed to represent  
13 petitioner, and shall have **thirty (30) days** from the date of entry of this order to undertake  
14 representation of petitioner or to indicate to the court her inability to represent petitioner in these  
15 proceedings.

16 **IT IS FURTHER ORDERED** that the Clerk of Court shall **SEND** a copy of this order to  
17 Michael Pescetta, Capital Habeas Division, Office of the Federal Public Defender, 411 East  
18 Bonneville Ave., Ste. 250, Las Vegas, NV 89101.

19 **IT IS FURTHER ORDERED** that the Clerk shall **SERVE** the respondents, via electronic  
20 mail, with a copy of the petition for writ of habeas corpus (docket #1) and a copy of this order.  
21 Respondents' counsel shall file a Notice of Appearance of Counsel within **thirty (30) days** from the  
22 date of entry of this order, but shall not answer the habeas corpus petition until the court orders  
23 otherwise.

24 DATED: *Sept. 24, 2005*

25  
26   
UNITED STATES DISTRICT JUDGE